

Notice of Allowability

Application No.

09/976,740

Examiner

Rita Mitra

Applicant(s)

LEES ET AL.

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendments 9/9/2004.
2. ☒ The allowed claim(s) is/are 42-50,67,69-72,74,75,80, 81 and 99-104.
3. ☒ The drawings filed on 10/12/2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>11/12/2002</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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DETAILED ACTION***Status of the Claims***

Applicants' amendment and response to office action dated April 9, 2004, filed on September 9, 2004, is acknowledged. Claims 1-41, 51-66, 68, 73, 76-79, 82-87, 89 and 94 have been canceled. Claims 46-48, 72, 74, 75 have been amended. Claims 88, 90-93, 95-98 have been withdrawn. Applicants' have indicated that the election of Group III, claims 46-50, 59-61, 72-75, 81, 85-87 was made with traverse. The traversal is on the ground(s) that the human LBP-2 polypeptide set forth in SEQ ID NO: 43 (full length) and SEQ ID NOs: 7, 19, 20, 21 and 22 (fragments and variants) are highly related to each other, therefore, simultaneous examination of nucleic acids encoding each of these human LBP-2 polypeptides is not expected to be unduly burdensome. Applicants' traversal is fully considered but not found persuasive because search of total 12 sequences (6 nucleic acids and 6 amino acids), each in 5 to 6 databases is an undue burden for the Examiner. However, claims 42-45, 67, 69, 70, 71, 80, 81 and 99-104 requiring SEQ ID NO: 7, 19, 20, 21 and 22 have been joined with claims 46-50, 72, 74 and 75 requiring SEQ ID NO: 43. Therefore, claims 42-50, 67, 69-72, 74, 75, 80, 81 and 99-104 are currently pending.

The restriction requirement is still deemed proper and is therefore made FINAL.

→ *See continuation*

Response to Amendments and Remarks

Claim Rejections - 35 USC § 112, first paragraph

Claims 59-61, 73 and 85-87 are cancelled thereby rendering the rejection moot. Rejection of claims 46-48, 72, 74, 75, and 81 are withdrawn in view of amendments to the claims.

Claim Rejections - 35 USC § 112, second paragraph

Claims 59-61, 73 and 85-87 are cancelled thereby rendering the rejection moot. Rejection of claims 46-48, 74, 75, and 81 are withdrawn in view of amendments to the claims.

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Claim Rejections - 35 USC § 102

Claims 73 and 85 are cancelled thereby rendering the rejection moot. Rejection of claim 72 is withdrawn in view of amendment to the claim.

An **Examiner's Amendment** to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Examiner's Amendments to the Specification:

On page 78 (abstract page), the title "Novel Low Density Lipoprotein Binding Proteins And Their Use In Diagnosing And Treating Atherosclerosis" has been deleted.

→ See continuation

Examiner's Amendments to the Claims

Non-elected claims 88, 90-93, 95-98 have been cancelled.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Jack Brennan on November 10, 2004.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The prior art of record does not teach or suggest an isolated nucleic acid comprising a nucleotide sequence that encodes a polypeptide comprising an amino acid sequence that binds to low density lipoprotein (LDL), said polypeptide is called LBP (LDL binding protein), wherein the amino acid sequence of said protein is set forth in SEQ ID NO: 43 (full length), and SEQ ID NOs: 7, 19, 20, 21 and 22 (fragments/variants).

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Claims 42-50, 67, 69-72, 74, 75, 80, 81 and 99-104 are allowed.

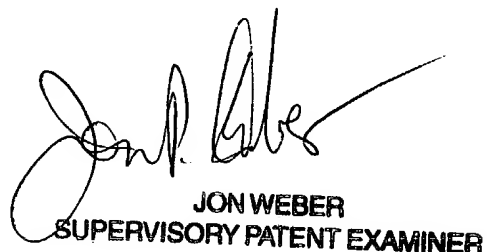
Inquiries

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rita Mitra whose telephone number is (571) 272-0954. The Examiner can normally be reached from 9:30 a.m. to 6:30 p.m. on weekdays. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Jon Weber, can be reached at (571) 272-0925. Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Fax Center number is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0547.



Rita Mitra, Ph.D.

November 10, 2004



JON WEBER
SUPERVISORY PATENT EXAMINER

Continuation of 09/976,740

In the **Status of the Claims:**

After "FINAL", insert the following sentence.

However, after consideration of the allowability of the remaining claims, withdrawn claims 42-45, 67, 69, 70, 80 and 99-104 are hereby rejoined.

In the **Examiner's Amendments to the Specification:**

At line 1 of the specification please amend the continuing data to read:

--This application is a divisional of U.S. Patent Application No. 09/616,289, filed July 14, 2000, now U.S. Patent No. 6,632,923 which is a continuation-in-part of U.S. Patent Application No. 09/517,849, filed March 2, 2000, now U.S. Patent No. 6,605,588 which is a continuation-in part of U.S. Patent Application No. 08/979,608, filed November 26, 1997, now U.S. Patent No. 6,355,451 which claimed priority from U.S. Provisional Application No. 60/031,930, filed November 27, 1996, and U.S. Provisional Application No. 60/048,547, filed June 3, 1997. These applications are incorporated herein by reference in their entirety. --